Raised Bill 6393
Public Hearing: 3-15-13

TO: MEMBERS OF THE COMMITTEE ON PUBLIC HEALTH
FROM: CONNECTICUT TRIAL LAWYERS ASSOCIATION (CTLA)
DATE: MARCH 15, 2013

RE: OPPOSITION TO RAISED BILL 6393 – AN ACT CONCERNING THE PROFESSIONAL STANDARD OF CARE FOR EMERGENCY MEDICAL CARE PROVIDERS

The Connecticut Civil Justice System has proven itself an effective and enduring tool for holding negligent physicians accountable. This bill would change that system in an unprecedented and unwarranted fashion. If passed, RB 6393 would change a long-established standard of proof in civil cases for injuries caused by an emergency department from the "preponderance of the evidence" to a "clear and convincing" standard, a standard more appropriate for the involuntary commitment to a mental institution or acts of fraud and libel.

The burden of "clear and convincing evidence" is a quasi-criminal standard of proof that is almost impossible for a person who has been harmed by negligent conduct to meet. Practically, the bill essentially immunizes the negligence of anyone (doctors, nurses, consultants, lab techs, pharmacists, etc.) who provides care to anyone in an emergency room.

Raised Bill 6393 goes far beyond the stated purpose

A hospital's EMTALA duties start with a required examination of the patient, then stabilization. For example, if a patient comes to the emergency room with a broken ankle, EMTALA requires that a physician examine the patient and determine if the patient has some condition which could kill or cause permanent harm to any body part if not immediately treated. If the patient's condition is limited to a broken ankle, the hospital's EMTALA duties are limited to the physician's examination and are satisfied.

Under RB 6393, if a patient is designated as unstable, and other consultants such as an orthopedic surgeon or anesthesiologist come to the hospital to the see the patient, then these providers would also be granted immunity, as would every emergency room hospital employee who touched or cared for the patient.

Emergency Rooms – Enter at your own risk!

According to the **Connecticut Office of Health Care Access (OHCA),** in 2009 over 1.6 million Connecticut residents visited the emergency rooms of the state's acute care hospitals, including their satellite emergency departments. Nationally, more than 225,000 people die every year as a result of medical negligence, with **half of those deaths occurring due to emergency room errors.**

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Restrictions on patient's legal rights, such as proposed in RB 6393, have a disproportionate impact on women, racial and ethnic minorities. The same OCHA report indicated that 53.9% of ER visits were for female patients with nearly 27% representative of racial and ethnic minorities who, according to a recent Harvard study, are more likely to receive negligent emergency room care and therefore seek compensation and justice through our courts.

This Harvard study found that, "…there were significant differences between hospitals that serve predominantly minority population and other hospitals. That is, blacks were more likely to be hospitalized at institutions with more adverse events and higher rates of negligence." In 2002, the Institutes of Medicine published a landmark study **entitled *Unequal Treatment: Racial and Ethnic Disparities in Health Care.*** Dr. Brian Smedley, director and co-editor of the report, said, "The health care playing field is not level…..for minorities, many populations of color who, on average, receive lower quality and intensity of health care." The hospital location with the highest proportion of negligent adverse events (52.6%) is the emergency department, where people without health insurance go for primary care.

In the most vigorous of terms, the Connecticut Trial Lawyers Association must **OPPOSE RB 6393**, as concept of "clear and convincing evidence" is the most inappropriate standard for this type of civil case and, almost impossible for a patient to overcome.

WE URGE THE COMMITTEE TO VOTE NO ON RB 6393